

May 13, 2021

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Marlene Dortch, Secretary

Federal Communications Commission

45 L St., NE

Washington, DC 20554

VIA ECFS ONLY

Re: WCB Dkt. No. 12-375

Prison Policy Initiative – Notice of Ex Parte Presentation

Dear Ms. Dortch:

On May 11, 2021, Peter Wagner, Stephen Raher, and Andrea Fenster from the Prison Policy Initiative met via telephone with staff of the Wireline Competition Bureau. The FCC participants on the call were William Kehoe, Terri Natoli, Gil Strobel, Irina Asoskov, Peter Bean, Erik Raven-Hansen, Minsoo Kim, Amy Goodman, Susan Bahr, Simon Solemani, and Katherine Jeanne Morehead. During this meeting, Prison Policy Initiative discussed three topics: (1) why single call caps and third-party financial fees should be treated separately, (2) language regarding site commissions in the draft Third Report & Order, and (3) the proposed threshold for large jails of 1,000 average daily population (“ADP”). Attached to this letter is a copy of the written materials we provided to staff during the meeting.

Single Calls and Third-Party Financial Transaction Fees

The Prison Policy Initiative supports a cap on single-call transaction fees at an amount lower than the \$6.95 currently charged by Western Union to send funds to GTL. During the meeting, we voiced support for the proposal of Network Communications International Corp., to adopt a single-call third-party provider transaction fee cap not to exceed the Automated Payment Fee or Live Agent Fee (as applicable).¹ We also encouraged the Commission to adopt a cap for Third Party Financial Transaction Fees no higher than \$6.95 (and the record supports a cap as low as \$3.95), and require carriers who wish to charge a fee in excess of that amount to submit a petition for waiver, similar to that required by Alabama Public Service Commission.²

¹ NCIC Comments at 3 (Nov. 23, 2020) (suggesting that fee caps for single calls should be tied, not to the third-party financial transaction fees, but to the \$3.00 Automated Payment Fee cap or the \$5.95 Live Agent Fee cap); Ex Parte Comments of Lee G. Petro, at 1-2 (July 28, 2020). *See also* Notice of Ex Parte Presentation by Glenn S. Richards (May 12, 2021) (proposing modifications to the draft § 64.6020(b)(2)).

² Alabama Pub. Serv. Comm’n Dkt. 15957, Further Order Adopting Revised Inmate Phone Service Rules, *available at* <http://psc.alabama.gov/Telecom/Engineering/documents/Dec%202014%20Order%2015957%20updated%20thru%206-12-2015.pdf>.

The draft report and order states that the “third-party transaction” for single calls in 47 C.F.R. § 64.6020(b)(2) is the same type of “third-party financial transaction” referred to in § 64.6020 (b)(5).³ While the Commission has previously allowed charges for single calls “in a manner consistent with [the Commission’s] approach to third-party financial transaction fees,” these two fees are not the same. Instead, to our knowledge, it would not be possible to use Western Union or MoneyGram on a single call product. ICSolutions, for example, has stated that such single calls “require the consumer to use a debit or credit card to pay for the call.”⁴ The fees associated with single calls are not simply financial transaction fees, but the result of outsourcing: companies are able to inflate the price of single calls by relying on third parties rather than offering in-house processing, making it easier to avoid ancillary fee restrictions and make more money.⁵ At least one provider (notably one with a much smaller share of the market than GTL) is able to recover the costs associated with their single calls at a significantly lower rate.⁶

Further, turning to third-party financial transaction fees, other carriers have even lower pass-through fees than GTL’s \$6.95 Western Union fee.⁷ For example, the MoneyGram fee to send funds to NCIC or Securus is as low as \$4.99.⁸ In Dallas County, Texas, the fee to send money to Securus via MoneyGram is \$3.95.

Accordingly, we urge to Commission to lower the maximum that can be charged for “single calls” and to close the loophole that allows providers to receive unregulated profits from third-party financial transaction fees.

Site Commissions

We also expressed concern that the definition of “legally mandated site commissions” in the draft Third Report & Order is susceptible to abuse. Our concern relates to the draft rule’s reference to site commissions required by regulation. Because state and local correctional facilities are largely exempt from state administrative procedure statutes, corrections administrators could easily use administrative rules to unilaterally “require” site commissions for purposes of the proposed rule.⁹

³ Draft Third Report and Order, Order on Reconsideration, and Fifth Further Notice of Proposed Rulemaking, ¶ 212, n.643.

⁴ Notice of Ex Parte Presentation by Inmate Calling Solutions, LLC, Attach. 1 at 3-4 (Oct. 15, 2015), available at <https://ecfsapi.fcc.gov/file/60001329584.pdf>.

⁵ *Id.* at 3-4. NCIC Comments at 3.

⁶ NCIC Comments at 3; Ex Parte Comments of Lee G. Petro, at 1-2 (July 28, 2020).

⁷ AmTel admitted to receiving a kickback on these fees. See Peter Wagner & Alexi Jones, *State of Phone Justice: Local Jails, State Prisons and Private Phone Providers*, Exh. 2 (Feb. 2019), available at https://www.prisonpolicy.org/phones/2019_exhibits/exhibit_2.pdf.

⁸ See Attachment at 5.

⁹ See Model State Admin. Procedure Act §§ 103 and 102(3) (exempting local governments); American Bar Ass’n House of Delegates, Resolution 103B (Feb. 10, 2014), available at https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKEwiW_aHbx8DwAhWPrZ4KHWmKASgQFjABegQIBBAD&url=https%3A%2F%2Fwww.americanbar.org%2Fcontent%2Fdam%2Faba%2Fdirectories%2Fpolicy%2Fmidyear-2014%2F103b-2014m.docx&usg=AOvVaw1O4tKhvxbA39T-L1KCR1dI (discussing state correctional systems exempt from administrative procedure statutes).

The Prison Policy Initiative reiterated its belief that site commissions should never be used to recover expenses that are not directly and reasonably related to the provision of communications services. Nonetheless, to the extent that the Commission adopts the proposed rules regarding to legally-required site commissions, we believe the text should be modified to prevent abuse. We understand that the Commission's reference to regulations in this context is focused on regulations issued by state utilities commissions; we therefore suggest amending proposed 47 C.F.R. § 64.6030(d)(1) to read as follows:

Providers subject to an obligation to pay Site Commissions by federal or state statute, or by a regulation issued by a state commission (as defined in 47 U.S.C. § 153(48)), may recover the full amount of such payments through the Legally-Mandated Facility Rate Component subject to the limitation that the total rate (Provider-Related Rate Component plus Facility-Related Rate Component) does not exceed \$0.21 per minute.

Average Daily Population Threshold

We urged the Commission to lower the threshold for the ADP required to be considered a large jail so that more people can benefit from newly lowered rate caps.

Should there be any questions regarding this submission, please contact the undersigned.

Sincerely,



Andrea Fenster
Staff Attorney

Attachment

cc (via email):

Hon. Jessica Rosenworcel, Acting Chair
Hon. Brendan Carr, Commissioner
Hon. Geoffrey Starks, Commissioner
Hon. Nathan Simington, Commissioner
Kris Monteith, Chief, Wireline Competition Bureau
William Kehoe, Wireline Competition Bureau
Irina Asoskov, Wireline Competition Bureau

Differentiating and capping single call fees and third-party payment fees

Prison Policy Initiative

May 11, 2021

The “third-party transaction” referred to in section 64.6020(b)(2) for single-call services is the same type of “third-party financial transaction” referred to in section 64.6020(b)(5).

—Draft R&O, n.643

[T]he third-party financial transaction fee described in section 64.6020(b)(5) is the same as the third-party transaction fee referred to in the rule pertaining to single-call services.

—Draft R&O, n.655

Contents:

- Single call explainer from *State of Phone Justice* (2019)
- Western Union/MoneyGram explainer from *State of Phone Justice* (2019)
- Alabama’s effective method of reining in third party fee abuse
- Historical data on what Western Union and MoneyGram charged for payments each provider in 2013, 2018/2019, 2020 and 2021.

Single calls

CHARGES MAY APPLY

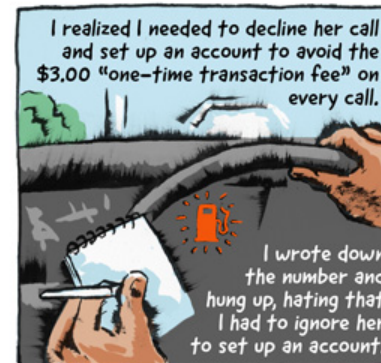
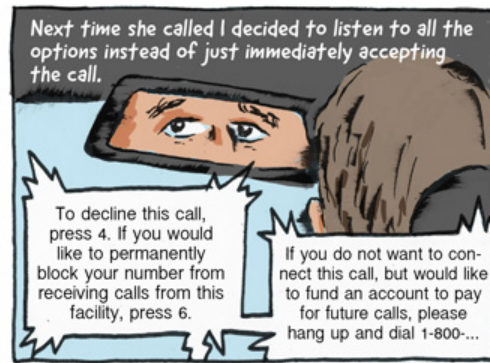
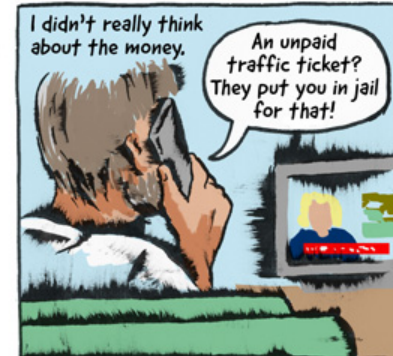
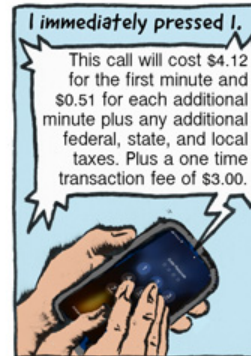


Image from the February 2019 Prison Policy Initiative report *State of Phone Justice: Local jails, state prisons and private phone providers* available at https://www.prisonpolicy.org/phones/state_of_phone_justice.html

Western Union/MoneyGram

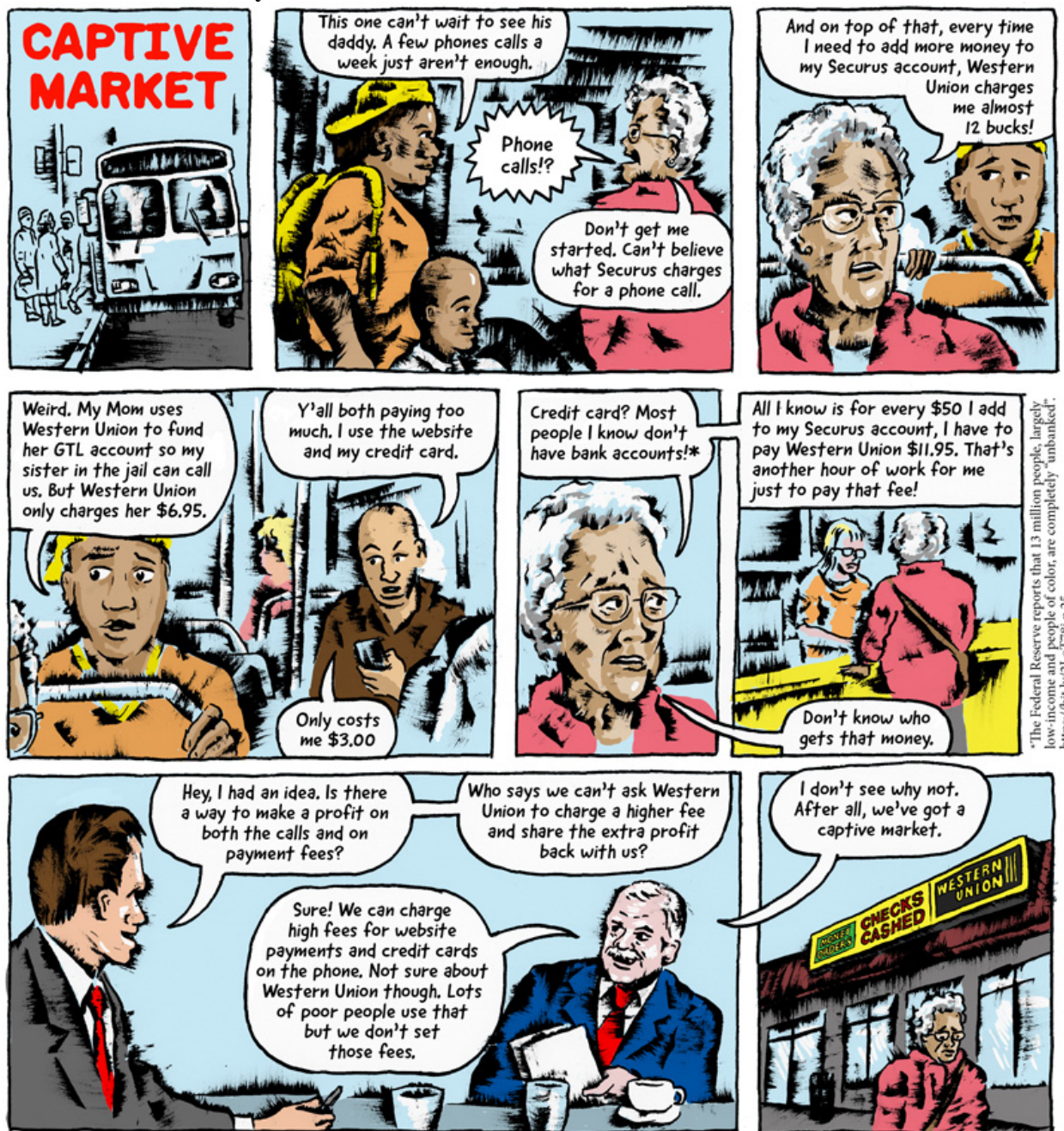


Image from the February 2019 Prison Policy Initiative report *State of Phone Justice: Local jails, state prisons and private phone providers* available at https://www.prisonpolicy.org/phones/state_of_phone_justice.html

Alabama's effective regulation of third-party fee abuse

8.26 By the 45th day⁸² from the implementation date of this Order, Providers whose customers are charged payment transfer fees by Western Union/MoneyGram that exceed \$5.95 shall submit the following to the Commission:

A petition for waiver from the requirement to arrange payment transfer fees of no more than \$5.95. The petition for waiver shall include the following:

A detailed explanation of why the provider is unable to arrange with Western Union/MoneyGram for payment transfer fees of \$5.95 or less for its customers.

A sworn affidavit signed by the ICS Provider CEO or President affirming that the ICS provider receives no portion of the revenue charged the provider's customers by the applicable payment transfer services.

Identification of the payment transfer fee(s) charged the provider's customers by Western Union/MoneyGram and the additional services the provider receives from Western Union/MoneyGram for assessing payment transfer fees that are higher than the fees charged the customers of other ICS providers.

Further Order Adopting Revised Inmate Phone Service Rules (Updated with amendments approved in Commission Orders dated January 16, 2015 and June 12, 2015.)

<http://psc.alabama.gov/Telecom/Engineering/documents/Dec%202014%20Order%2015957%20updated%20thru%206-12-2015.pdf>

Historical fees for payments from Western Union and MoneyGram to ICS providers

Company	2013			Dec. 2018/Jan. 2019		Summer 2020		May 2021	
	Western Union Fee	Separate phone company fee from Western Union	MoneyGram Fee	Western Union Fee	Moneygram Fee	Western Union Fee	Moneygram Fee	Western Union Fee	Moneygram Fee
AmTel	\$9.95	\$0	unknown	\$9.99	not offered	\$6.50	not offered	\$9.99	not offered
Combined Public Communica	unknown	unknown	unknown	not collected	not collected	N/A	not offered	not offered	not offered
Consolidated Telecom (CTEL)	unknown	unknown	unknown	not collected	not collected	N/A	not offered	not offered	not offered
Global Tel*Link	\$10.95	\$0	unknown	\$6.95	not offered	\$6.95	not offered	\$6.95	not offered
ICSolutions	\$5.50	As high as \$6.95	unknown	\$5.00	not offered	\$5.00	not offered	unknown	unknown
Infinity Networks	not offered	N/A	unknown	N/A	\$6.95	\$0 (*)	not offered	unknown	unknown
Lattice	\$9.95	\$0	unknown	\$9.95	not offered	\$0 (*)	not offered	unknown	unknown
Legacy	\$6.00	As high as \$3.95	unknown	unknown	unknown	unknown	unknown	unknown	\$5.99
NCIC	\$9.95	\$0	unknown	\$6.50	\$4.99	\$6.50	\$4.99	\$6.50	\$4.99
Pay Tel	\$5.95	\$0	unknown	\$5.00	\$6.49	unknown	unknown	\$5.00	\$5.95
Prodigy	unknown	unknown	unknown	unknown	unknown	not offered	not offered	not offered	not offered
Reliance	unknown	unknown	unknown	unknown	unknown	not offered	\$7.99 for cash at location / \$9.49 for credit/debit	not offered	not offered
Securus	\$11.95	\$0	unknown	\$11.95	\$11.99	\$5.95	\$5.99	\$5.95	\$4.99 (\$3.95 for Dallas County, TX)
Telmate	not offered	N/A	unknown	not offered	\$6.99	not offered	\$6.99	not offered	\$6.99
Turnkey Corrections	not offered	N/A	unknown	unknown	unknown	not offered	not offered	not offered	not offered
Column source:	Please Deposit All of Your Money, Table 3. https://www.prisonpolicy.org/phones/pleasedeposit.html#table3			State of Phone Justice, Western Union Table, https://www.prisonpolicy.org/phones/state_of_phone_justice.html#westernunion_table		Collected by the Prison Policy Initiative (Alexi Jones). (*)These rates were not on Western Union's website, but Western Union customer service quoted these fees on the telephone.		Collected by the Prison Policy Initiative (Andrea Fenster)	